
1994 Wis Eth Bd 2
EMPLOYMENT CONFLICTING WITH OFFICIAL DUTIES; IMPROPER
USE OF OFFICE; JUDGES

Statutes administered by the Ethics Board are not an impediment to a municipal judge's serving as a mediator, arbitrator, or mini-trial judge in dispute resolution as long as: (1) the official does not serve in matters over which the official, as a municipal judge, might have jurisdiction; (2) the official does not use his or her public position to obtain private employment; and (3) the official does not use the municipality's time, facilities, supplies, or services not generally available to the public in pursuing the official's private endeavors. OEB 94-2 (April 14, 1994)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a full-time municipal judge and a state public official.
 - b. You are interested in acting as a mediator, arbitrator, and mini-trial judge in alternative dispute resolution.

Questions

- [2] The Ethics Board understands your question to be:

Does the Ethics Code restrict your ability to serve as a mediator, arbitrator, or mini-trial judge while you are a municipal judge?

Discussion

- [3] The provisions of the Ethics Code most applicable to your question are §§19.45(2) and 19.46(1), *Wisconsin Statutes*.¹ There are several ways in which

¹ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

Section 19.46(1), *Wisconsin Statutes*, provides:

these statutes may restrict your serving as a mediator, arbitrator, or mini-trial judge.

Use of Position and Municipality's Resources

[4] First, §§19.45(2) and 19.46(1)(b) provide, in essence, that

No state public official
May use his or her public position or office
To obtain or assist in producing
A substantial private benefit or anything of substantial value.

This means that you may not use your official position, including the title or prestige of office, to obtain private employment.² Thus, for example, you should not use your official title in connection with any private dispute resolution activities. It also means that you may not rely upon the municipality's time, facilities, supplies, or services not generally available to the public in pursuing your private endeavors.

Substantive Conflicts

[5] Second, §19.46(1)(a) provides, in essence, that

No state public official
May take any official action
Substantially affecting a matter
In which the official has a substantial financial interest.

The legislature has recognized that state public officials may need to engage in private economic pursuits; and the Ethics Code "does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to the state." Section 19.45(1), *Wisconsin Statutes*.

[6] At the same time, a public officer owes an undivided duty of loyalty to the public whom he or she serves and should avoid placing himself or herself in a position in which a conflict of interest might arise.³ An official should not

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² See, e.g., 10 Op. Eth. Bd. 19 (1988); 9 Op. Eth. Bd. 45 (1987); 9 Op. Eth. Bd. 21 (1986); 8 Op. Eth. Bd. 61 (1985).

³ 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

pursue a private interest if: (1) it will materially affect the performance of the official's duties or (2) it will adversely affect the image or effectiveness of the office by giving rise to the appearance or reality of impropriety.⁴ Therefore, we advise that you not serve as a mediator, arbitrator, or mini-trial judge in alternative dispute resolution in any matters in which your court would have subject matter jurisdiction and jurisdiction over the parties. To act otherwise might mean that parties who appear before you when you are acting in your private capacity would be foreclosed from bringing the matter to you as municipal judge. Moreover, acting in matters that potentially could be brought to municipal court may give the appearance of official sanction to your private decisions.

Advice

[7] The Ethics Board advises that statutes administered by it are not an impediment to a municipal judge's serving as a mediator, arbitrator, or mini-trial judge in dispute resolution as long as: (1) the official does not serve in matters over which the official, as a municipal judge, might have jurisdiction; (2) the official does not use his or her public position to obtain private employment; and (3) the official does not use the municipality's time, facilities, supplies, or services not generally available to the public in pursuing the official's private endeavors.

⁴ 1992 Wis Eth Bd 32, *supra*.